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ADVISORY SERVICES IN THE FIELD OF HUMAN RIGHTS

Report by the independent expert, Mr. Fanuel Jariretundu Kozonguizi, on the conditions in Somalia, prepared in accordance with paragraph 6 of Commission on Human Rights resolution 1993/86

Addendum

Introduction

1. As indicated in paragraph 15 of document E/CN.4/1994/77, the independent expert undertook a field mission to Somalia from 17 January to 1 February 1994. In chronological order, he visited London, where he contacted various non-governmental organizations with pertinent informations on developments in Somalia; Geneva, where he visited United Nations High Commissioner for Refugees, International Committee of the Red Cross and United Nations Volunteers Programme; Nairobi, where he had consultations with representatives of United Nations Development Programme, Food and Agriculture Organization of the United Nations, United Nations Organization for Education, Science and Culture and United Nations High Commissioner for Refugees; and, with the agreement of Admiral Howe, Special Representative of the Secretary-General, Mogadishu.

2. During his visit to Mogadishu, the independent expert met with a number of key factions leaders including Mr. Ali Mahdi, representative of 12 political factions. With respect to the United Nations Operation in Somalia (UNOSOM II), he held consultations with the following persons: Admiral Howe, Ambassador Lausana Kouyaté, Mr. David Ijalaye, Mr. Omar Halim, General Abu, its Political Office and Humanitarian Office, the Human Rights Unit within the UNOSOM II Justice Division, the representatives of United Nations agencies working in Somalia. In addition, he held

consultations with members of the Commission of Inquiry established under Security Council resolution 885 (1993) of 16 November 1993. The expert, in addition, met with members of Somali civil society, notably with representatives of Somali women's organizations and the former Minister of Finance of Somalia.

3. The expert was also to meet with the head of the three political factions in Nairobi, but unfortunately such a meeting could not be arranged in time.

I. HISTORICAL BACKGROUND

4. Before independence Somalis were divided between the British, the French and Italian colonies, with a substantial population in Ethiopia, where most of them lived in the area known as the Ogaden. The area known as Jubaland was formerly under the British colonial administration, but in 1925 it was partitioned by Britain and Italy. The southern part of Jubaland was retained by Britain and later called the Northern Frontier District (N.F.D.) whilst the northern part was absorbed into the Italian colony. The N.F.D. was attached to Kenya and when Kenya became independent in 1963, it became part of that country.

5. The boundaries of present-day Somalia cover the British and Italian colonies (including the Italian part of northern Juba); French Somaliland (the land of the Afars and Issas) eventually became the independent State of Djibouti.

6. Following the desire of political leaders in both the British and Italian colonized parts of Somalia, the country became the independent Somali Republic on 1 July 1960 with Dr. Abdirashid Ali Shermarke as Prime Minister and Adan Abdulle Osman as President. A new Government was formed in June 1967 under the premiership of Mohamed Haji Ibrahim Egal with Ali Shermarke as President. President Shermarke was assassinated on 15 October 1969 and his assassination was followed by a military coup d'état on 21 October, in which the army seized power without encountering opposition. The coup was led by Siyad Barre, the commander of the army.

7. Siyad Barre's rule is said to have been one of terror. According to Professor Tom Farer, in testimony submitted to the Committee on Armed Services of the United States House of Representatives in October 1993, Siyad Barre became a "butcher" of his own people murdering religious elders in the name of modernity and killing "on a progressively larger scale and relying ever more on a narrow clan based of support thus ending his flirtation with an inclusive nationalism".

II. THE NEW CIVIL STRIFE

8. The downfall of President Siyad Barre in January 1991 resulted in a power struggle and clashes between clans in many parts of Somalia. This culminated in the most intense fighting in the capital, Mogadishu, between two factions - one supporting Ali Mahdi Mohamed and the other supporting General Mohamed Farah Aidid, President and Chairman of the Somali United Congress (USC) respectively. The hostilities resulted in widespread death and destruction, forcing hundreds of thousands of civilians to flee their home and causing a

dire need for emergency humanitarian assistance. Almost 4.5 million people in Somalia were threatened by severe malnutrition, with the most affected living in the countryside. It is estimated that 300,000 people have died since November 1991 whilst 1.5 million lives were at immediate risk.

9. This was followed by political chaos, a deteriorating security situation, widespread banditry and looting, which compounded the problem and severely constrained the delivery of humanitarian supplies. In fact, by March 1991, the United Nations, through its humanitarian efforts, was fully engaged in Somalia although the volatile security situation would compel the United Nations on several occasions temporarily to withdraw its personnel from Somalia. It was not until the end of 1991 that the United Nations would engage, in the words of the then-retiring Secretary-General Javier Perez de Cuellar, "in an initiative in an attempt to restore peace in Somalia". After consulting the incoming Secretary-General, Boutros Boutros-Ghali, Mr. Perez de Cuellar asked the Under-Secretary-General for Political Affairs, James O.C. Jonah, to visit the area.

10. The visit of Under-Secretary-General Jonah to the area was followed by a series of Security Council resolutions on Somalia as well as the appointment of a special representative of the Secretary-General, first Mr. Mohammed Sahnoun of Algeria, on 1 May 1992, and then Mr. Ismat Kittani of Iraq, on 3 November 1992.

11. Apart from the efforts of the Special Representatives in Somalia itself, several meetings on humanitarian assistance to Somalia were convened by the Secretary-General at which representatives of the donor countries, other Governments, Somali political and community leaders, regional and subregional non-governmental organizations, United Nations agencies and international NGOs were present.

IV. UNITAF AND UNOSOM II

12. Despite the efforts of the Secretary-General, the situation continued to deteriorate as Somalia remained without a central government and Mogadishu was divided by rival militia. Not only did the extensive physical destruction of the country severely constrain the delivery of humanitarian supplies, but several of the Somali de facto authorities refused to agree to the deployment of United Nations troops to secure delivery of aid in areas of the greatest need.

13. UNOSOM II troops in Mogadishu were fired upon and their vehicles and arms taken. Relief ships were prevented from docking and even shelled. Airports and seaports came under fire. The result was that, while relief supplies were ready and in the pipeline, very little was reaching those in need. Some estimates had it that some 3,000 persons a day were dying of starvation while warehouses remained stocked.

14. It was against that background that on 3 December 1992 the Security Council adopted resolution 794 (1992) in which, the Council, inter alia, "Endorses the recommendation by the Secretary-General ... that action under Chapter VII of the Charter of the United Nations should be taken in order to establish a secure environment for humanitarian relief operations

in Somalia as soon as possible". In accordance with the resolution, the Unified Task Force (UNITAF), spearheaded by the United States, was deployed in Mogadishu in December 1992. By 26 January 1993, the Secretary-General was able to congratulate UNITAF for rapidly and successfully securing major population centres and ensuring that humanitarian assistance was delivered and distributed; he indicated that UNOSOM's main preoccupation was to plan for the transition from its operations to those of UNOSOM II.

V. SOMALI POLITICAL MOVEMENTS

15. Against the background of mutual hostilities, the Somali political movements were able to come together at various conferences initiated by the Secretary-General where several agreements were reached, more often to be breached than adhered to. Between 4 and 15 January 1993, an informal preparatory meeting was convened at Addis Ababa for a national reconciliation conference to be held under United Nations auspices. Several agreements were concluded and signed, including one on a national reconciliation conference to be held on 15 March 1993 at Addis Ababa.

16. The Conference on National Reconciliation in Somalia was duly convened under the chairmanship of the Secretary-General's Deputy Special Representative for Somalia and was attended by leaders of 15 Somali political movements. Also present were representatives of the League of Arab States, the Organization of African Unity, the Organization of Islamic States, the Standing Committee of the Countries of the Horn of Africa and the members of the non-aligned movement. The agreement concluded at this Conference was endorsed by all the participants, including representatives of women's and community organizations as well as elders and scholars.

17. In terms of the agreement a transitional national council, vested with administrative and executive authority, was to be established and a committee was set up to work on a draft transitional charter of the Republic of Somalia which was adopted by the committee on 3 June 1993 under the chairmanship of Hussein Elabe Fahiye.

18. In the meantime, the Secretary-General had appointed Admiral Jonathan T. Howe of the United States as his new Special Representative for Somalia and Lieutenant-General Cevik Bir of Turkey as Force Commander of UNOSOM II. The Security Council by resolution 814 (1993), still acting under Chapter VII of the Charter of the United Nations, expanded the size and mandate of UNOSOM II, extending it to 31 October 1993.

VI. EXPANSION AND EXTENSION OF THE MANDATE OF UNOSOM II

19. It is to be noted that after the expansion and extension of the mandate of UNOSOM II, the task of disarming the Somali factions and armed groups who obstructed humanitarian activities fell to them. The priority which UNOSOM II gave to disarmament apparently generated the hostility of some clan leaders fearful of losing their power. As remarked earlier, these leaders had not only refused to disarm but in some cases had resorted to violence in order to frustrate the efforts of UNOSOM II.

20. Thus, on 5 June 1993, 25 Pakistani soldiers were killed, 10 were reported missing and 54 were wounded in a series of ambushes and armed attacks against UNOSOM II troops throughout south Mogadishu by Somali militiamen, apparently belonging to the faction led by General Mohamed Farah Aidid. The incident is the subject of investigation by the Commission of Inquiry established by Security Council resolution 885 (1993) of 16 November 1993. As such, it is at this stage completely outside the purview of the resolution of the Commission on Human Rights. However, that the outcome of the inquiry may have a bearing on the human rights situation in Somalia cannot be ruled out.

VII. OBSERVATIONS

21. In terms of Commission on Human Rights resolution 1993/86 endorsed by the Economic and Social Council in its decision 1993/282, the independent expert is mandated, inter alia, to assist the Special Representative of the Secretary-General for Somalia, through the development of a long-term programme of advisory services for re-establishing human rights and the rule of law, including a democratic constitution, as well as the eventual holding of periodic and genuine election by universal suffrage and secret ballot. It must be noted, however, that the development of any programme, long-term or short-term, must depend on the final resolution of the political disputes amongst the Somali factions since any programme for human rights in Somalia must be acceptable and endorsed by those who are expected to implement it.

22. Whatever the Commission had in mind in March 1993 in the aftermath of UNITAF's successful mission, the security situation has changed although it cannot be said that security is under siege or threat in all areas. Yet for purposes of the implementation of any human rights programme the situation in Mogadishu remains vital. Hence, without a central administrative structure it is not possible to lay down the foundations of a permanent programme of human rights for Somalia.

23. That having been said, it does not mean that the United Nations can be without a task in the field of human rights in the Somalia situation. It should be noted that in Somalia violations of human rights are twofold. On the one hand there are Somali violations of the rights of other Somalis whilst on the other a strong case has been made by several non-governmental organizations and, indeed by United Nations bodies, that there have been violations of Somali human rights by the UNOSOM II forces.

24. The independent expert considered that it is his task to deal with the latter situation; it is also his belief that the circumstances may warrant UNOSOM II remaining beyond the announced deadline.

25. As far as violations of human rights by UNOSOM II forces are concerned, this is a matter within the power of the Secretary-General, through his Special Representative and Force Commander, to rectify. This subject is dealt with at lengtn in the Amnesty International document "Peace-keeping and human rights" released on 26 January 1994 to coincide with the fiftieth session of the Commission on Human Rights. Case studies given in this document and useful and practical recommendations are made.

VIII. HUMAN RIGHTS SITUATION IN SOMALIA

26. Anyone who has seen the destruction of Somalia and, in particular, Mogadishu, and who has looked beyond any political settlement, let alone beyond any cease-fire and disarmament, must wonder whether Somalia will have at its disposal the resources to reconstruct the country. Until such reconstruction, it is difficult to see how any human rights programme can be implemented effectively. There is no doubt that the implementation of such a programme will require government structures to be in place, authorities to function properly and communications to be fully restored. Whatever some Somali leaders may claim, all the destruction is at their own hands, be it the air attacks of Siyad Barre's air force or the rockets of the factions on the ground.

27. The leaders of some factions, as well as representatives of the others, have informed the independent expert that at this juncture their main preoccupation is law and order in the country. In spite of a lull in the fighting since October 1993, they cannot be certain that the civil war may not continue, especially after the departure of the United States military contingent. It is therefore difficult for them, at this stage, to give attention to a programme of human rights.

28. Reference was constantly made to the draft transitional charter of Somalia which, whilst not a complete Charter of Fundamental Human Rights, provides the outlines of a democratic administration. The independent expert was informed that it was envisaged, after the adoption and installation of a transitional authority, to carry out a census and then to hold democratic elections.

29. At this stage the only nucleus of a human rights unit in Somalia is an office of human rights located in the Justice Division of UNOSOM II. The work of the officials of this office is constrained by the restriction on their movements in Mogadishu. Their communication with the Centre for Human Rights in Geneva has been non-existent. Nevertheless, armed with enthusiasm and commitment, if nothing else, they have been able to do some work on the prisons and police and have had some contact with Somalis interested in the promotion of human rights. Given adequate facilities, they told me that they would give attention to the activities of UNOSOM II regarding any violations of human rights.

30. In the view of the independent expert, it is premature at this stage for the Secretary-General to develop a long-term programme of advisory services for the re-establishment of human rights in Somalia. Further, it would be presumptuous as regards the wishes of the Somali people on the issue of a democratic constitution and the holding of elections. There is no doubt that when the time is ripe and, hopefully, the temporary propensity to destroy disappears, the Somali people will once more, as undoubtedly the majority do even now, look to the United Nations with its established machinery and logistics to assist them in whatever course they choose for their country.

IX. RECOMMENDATIONS

31. The UNOSOM II Human Rights Unit must be strengthened and expanded to be able to deal effectively with any violations of human rights by the UNOSOM II forces.

32. The Unit must be enabled to provide assistance to any Somali non-governmental human rights organization. In this regard, their activities should not be confined to Mogadishu but should extend to the rest of the country and they must be able to monitor the work of the regional and district authorities in the field of human rights in their respective areas.

33. When the structures for the governance of Somalia are in place, particularly at the central level, the Secretary-General must recommend and, if possible, help in the establishment of an office of a Commissioner for Human Rights or Ombudsperson for Somalia. Amongst the functions of such an officer will be to investigate complaints concerning alleged or apparent instances of violations of fundamental rights and freedoms as well as the abuse of power on the part of any official of the Government or organ of the Government.

34. Furthermore, the Secretary-General must recommend the appointment of human rights monitors throughout the country who should be able to furnish the Commissioner or Ombudsperson with information on the violations of human rights and incidents of abuse of power.

35. The Commissioner or Ombudsperson must be given power under the law to act effectively whether on receiving any complaint or on his own initiative.

36. The present report has taken into account the remarks of the Secretary-General in his report to the Security-Council (S/1994/12, para. 50) of 6 January 1994 that the "main focus of UNOSOM II's activities in the period ahead will be on promoting Somali initiatives in the political, security and nation-building process. That process must be a Somali process and every effort is and will continue to be made to help the Somalis assume responsibility for it".